IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1142 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PETLAD GOODS SUPPLYING CO.OP. SOCIETY LTD.

Versus

NATIONAL CO-OPERATIVE CONSUMERFEDERATION LTD.

Appearance:

1. First Appeal No. 1142 of 1985

MR MI PATEL for appellant

MR PM RAVAL for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

The appellant - original plaintiff herein has challenged the order of the learned 3rd Jt. Civil Judge (SD), Nadiad, dated 14th March 1985 in Special Civil Suit No. 142 of 1978 below Exh.37 whereby on a preliminary issue, the trial Court has dismissed the suit of the present appellant.

2. The short facts of the case are that the plaintiff, a registered Co-operative Society under the Gujarat Cooperative Societies Act, was given permit to import 300 tonnes of rice from Delhi and an export permit dated 29th October 1974 was also given. On that basis, the defendant agreed to sell a quantity of 10 wagon loads of rice of Basmati variety at the rate of Rs.360/- per quintal.

4. Pursuant to the notice given by the trial Court, the original defendant appeared and filed an application below Exh.27 contending that the suit is not maintainable for want of notice under Section 167 of the Gujarat Cooperative Societies Act, 1961 and for want of notice under Section 90 of the Delhi Cooperative Societies Act.

5. Both the issues were of pure question of law and therefore, the trial Court has decided the preliminary issue on the application tendered by the defendant.

6. The plaintiff had given notice Exh.3/15 to the defendant but as required under Section 167, the notice is required to be given to the Registrar and therefore, in view of the provisions of Section 167, the trial Court has accepted the preliminary objections raised by the respondent.

7. Learned Advocate Mr.Patel for the appellant has contended that the present appellant had given notice to the society, but he is not in a position to show that such notice was given to the Registrar as required under Section 167 of the Act. Mr.Patel relied upon a judgment of the Calcutta High Court in the case of M/s.National Agricultural Cooperative Marketing Federation Ltd. v. Govind Prasad Kanodia, reported in AIR 1974 Calcutta 399 wherein it was held that the purpose of the 1942 Act is limited to incorporation, regulation and winding up of Cooperative Societies with objects not confined to one State and therefore where the cooperative society registered under the Bombay Act had its branch office at Calcutta and a suit for damages was filed against it at Calcutta Section 3 of the Act cannot apply and cannot

exclude the operation of Section 70 of the Bombay Act as there is no question as to incorporation, regulation or winding up of the defendant society.

8. But in view of the judgment of this Court in the case of Bai Chanchalaben v. Ramanlal Keshavlal, reported in 22 GLR 101, wherein this Court has held that giving notice to the Registrar of Cooperative Societies before filing a suit cannot be waived and the principle of waiver laid down so far as Section 80 of Code of Civil Procedure does not apply in such cases and mandatory provisions can only be waived if it is not in the public interest and that the provision in Section 167 is not in public interest and therefore, cannot be waived. In view of the law laid down by this Court, we are of the opinion that the view taken by this Court requires to be upheld and the judgment relied upon by the learned Advocate for the appellant is not acceptable. Apart from that, considering the reasoning given and the ultimate conclusion reached by the trial Court, we see no merit in this appeal. The appeal is, therefore, dismissed.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

Sreeram.